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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 AHERN RENTALS, INC.,

12 Plaintiff,

13 v.

14 EQUIPMENTSHARE.COM, INC., et al.,

15 Defendants.  
16

No. 2:19-cv-01788-MCE-KJN

ORDER

17 Presently before the court is defendant Equipmentsshare.com's<sup>1</sup> ex parte application to  
18 quash 12 third-party subpoenas. (ECF No. 49). Also pending before the court are defendants'  
19 motions for protective orders (ECF Nos. 42, 47), defendant's motion to stay discovery in this case  
20 (ECF No. 44), and plaintiff's motion to compel, (ECF No. 45.) All of these motions are to be  
21 heard on April 30, 2020.<sup>2</sup> As set forth below, the court QUASHES the subpoenas at issue,  
22 without prejudice for reissuing the subpoenas should the court deny defendant's motion to stay.

23 Defendant's present motion seeks to quash subpoenas filed by plaintiff on 12 non-party  
24 companies. Plaintiff served the disputed subpoenas on April 7, 2020; and they require documents  
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26 <sup>1</sup> Matthew Allen and Derrick Torres are also defendants in this matter, but they did not join the  
27 present motion.

28 <sup>2</sup> These motions have been submitted without argument pursuant to Local Rule 230(g). (ECF No. 48.)

1 to be produced by April 24, 2020—six days before the court is to hear defendant’s motion to stay  
2 discovery in this matter.

3 While defendants do not have standing under Federal Rule of Civil Procedure 45 to  
4 challenge a subpoena issued to a nonparty absent some claim of personal right or privilege in the  
5 information sought by the subpoena, here, defendant’s motion is also predicated upon Federal  
6 Rule of Civil Procedure 26(c), pursuant to which the court may issue a protective order in  
7 appropriate circumstances. See Washington v. Thurgood Marshall Academy, 230 F.R.D. 18, 22  
8 (D.D.C. 2005) (construing defendant’s motion to quash subpoena served on third parties as a  
9 motion for protective order). “[W]here a defendant lacks standing to seek to quash subpoenas  
10 under Fed. R. Civ. P. 45, the Court may nonetheless sua sponte quash improperly issued  
11 subpoenas.” Elite Lighting v. DMF, Inc., 2013 WL 12142840, at \*3 (C.D. Cal. May 6, 2013)  
12 (citing Pike v. Trinity Industries, Inc., 2012 WL 2087171, at \*1-\*2 (M.D. Fla. June 8, 2012)).  
13 Pursuant to Fed R. Civ. P. 26(c) a court may “issue an order to protect a party or person from  
14 annoyance, embarrassment, oppression, or undue burden or expense[.]”

15 Here, plaintiff seeks documents from 12 companies to be produced in the middle of a  
16 global pandemic 6 days before the court hears defendant’s motion seeking a stay on discovery.  
17 Given the current stay-at-home order in the state of California,<sup>3</sup> it is likely—if not certain—that  
18 these requests would require individuals to violate a state order to comply with federal subpoenas.  
19 Beyond this clear predicament, this discovery dispute could be moot, at least temporarily, six  
20 days after the 12 companies are directed to respond, when the court hears the pending motion to  
21 stay discovery. For these reasons, the court finds that the burden of complying with these  
22 subpoenas far outweighs any potential benefit that plaintiff would gain from their compliance,  
23 and therefore quashes the 12 subpoenas at issue. After the court rules on the motions pending  
24 before it, and if discovery is not stayed, plaintiff may reissue the subpoenas and defendants may  
25 file appropriate objections.

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28 <sup>3</sup> Exec. Dep’t, State of California, Executive Order N-33-20 (Mar. 19, 2020),

1 Accordingly, it is HEREBY ORDERED that:


2 1. Defendant's ex parte application is GRANTED as set forth herein;

3 2. The court grants a protective order QUASHING the twelve (12) subpoenas that are the  
4 subject of defendant's motion; and

5 3. **Plaintiff must immediately notify each of the 12 non-parties, with a copy to**  
6 **counsel for defendant, that it has withdrawn the subpoenas pursuant to an order of this**  
7 **court and that the non-parties do not need to respond to the subpoenas; plaintiff shall also**  
8 **file notice with the court attesting to the same by April 20, 2020.**

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10 IT IS SO ORDERED.

11 Dated: April 17, 2020

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13 KENDALL J. NEWMAN  
14 UNITED STATES MAGISTRATE JUDGE

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